

REMARKS

Applicants thank the Examiner for the comments provided in the June 10, 2010 Office Action. Claims 57-71 have been canceled. New claim 81 is added by this amendment. After entry of this amendment, claims 42-56 and 72-81 will be pending.

New Claim 81

New claim 81 is directed to apparatus which provides a moisture controlled environment around the eyes comprising:

an eye enclosure adapted to provide an enclosed area simultaneously about both eyes of the user without obstructing vision through the enclosure;

a retainer for holding the eye enclosure in position;

a pump having a dual outlet;

a first container in communication a first of the outlets of the pump, the first container **containing an air drying source for drying air in the first container**;

a second container in fluid communication with a second of the outlets of the pump, the second container **containing an air wetting source for adding moisture to air in the second container**;

a mixing chamber fluidly connected to the first and second containers for receiving dried air from the first container and wetted air from the second container for mixing the dried air and the wetted air; and

tubing extending from the mixing chamber to the eye enclosure for delivering the mixed air to the eye enclosure.

Claim 81 is submitted as patentable over the art of record in that none of the applied references disclose the particular moisture control system required by claim 81. Applicants submit that in the absence of an actual disclosure of the claimed arrangement, rejection of this claim is improper. The claimed arrangement provides good control of humidity within the eye enclosure. There is no indication in Refojo et al., U.S. Pat. No. 4,461,303 or Schwebel, U.S. Pat. No. 6,641,264 for control of humidity by mixing dry and wetted air flows driving by a single pump.

Response to Rejection of Claims 52-56 and 72-80 (35 U.S.C. §103 - Refojo ('303) in view of Schwebel ('264))

Applicant requests reconsideration of the rejection of claims 42-56 and 72-80 under 35 U.S.C. § 103(a) as being unpatentable over Refojo et al. (US Patent No. 4,461,303) in view of Schwebel (US Patent No. 6,641,264). Each of the claims recites, in part, apparatus comprising: an eye enclosure adapted to provide an enclosed area **simultaneously about (or around) both eyes** of the user **without obstructing vision through the enclosure**.

The Examiner correctly states that Refojo does not disclose an eye enclosure that provides an enclosed area about both eyes simultaneously, but contends that Schwebel sets forth this feature. Schwebel is directed to partially sealed chambers that include a reservoir for moisture. The first embodiment of Schwebel (FIGS. 1, 2) is a sleep mask that is non-transparent, and hence is incompatible with the intent of Refojo.

The second embodiment of Schwebel (FIGS. 3, 4) resembles goggles/eyeglasses and has a moisture reservoir built in for providing a wet environment. Additionally, Refojo specifically states that the eye chamber has a **construction similar to that of one eyepiece** of a conventional swimmer's goggle (Col. 5 lines 32-34), thereby teaching away from this embodiment of Schwebel.

The third embodiment of Schwebel (FIGS. 5, 6) merely provides a visor that extends from the brim of a hat that as illustrated does not enclose an area about both eyes.

Applicants further emphasize that given that the Office has failed to provide a reference or citation as to why the combination of Refojo and Schwebel is motivated (#8 on Page 3 of the latest Office Action), and in fact cites the exact benefit of the Applicant's claims, is an indication of hindsight analysis. In particular, it is noted that Schwebel fails to show the circulation of conditioned air over the eye that is part of the means for supplying dry air to the eye enclosure. Schwebel provides moisture to the volume in front of the eyes by passive evaporation of liquid. Accordingly, there is no suggestion for modifying Refojo according to Schwebel to produce the claimed invention. Schwebel teaches that if the wearer is going to treat both eyes at the same

time in a manner which permits ambulation of the wearer, a passive, non-circulating system is used. There is no suggestion for modifying the circulating system of Refojo to simultaneously treat both eyes where the wearer (as a result of transparent, unobstructed vision) who may move about.

That Schwebel fails to cure any of the other deficiencies of Refojo (discussed below), such as an enclosed area with unobstructed vision, is further indicative of the shortcomings of the applied references.

Applicants additionally disagree with the Office's reasoning re the graduations on the lens of Refojo:

"The inclusion of small graduations, as shown in FIG. 3, will not prevent the patient from seeing through the eye enclosure. Therefore the eye enclosure will not obstruct the patient's vision".

Firstly, **obstructing** or otherwise hindering the patient's vision is different from the extreme case of **preventing** the patient from seeing through the enclosure altogether. Users of optical correction devices such as eyeglasses and contact lenses are well aware of how specs of dirt can obstruct vision. The duration of use for the Applicant's device is for extended periods, and clear vision is desirable.

As one of knowledge in the optical sciences can appreciate, for the graduations to truly provide no obstruction (i.e., to be invisible) to the user's eye in Refojo's system, Refojo would need to deliberately design the graduation keeping in mind a) visual acuity (the lines cannot be too close so as to be indistinguishable), and b) resolution limit (the human eye can resolve down to 0.1mm, for example) of the human eye. Such a design would defeat the purpose of the graduations. Refojo's best mode disclosure fails to address any such concerns, and to suggest that such features might be implied, and to reject the Applicant's claims on such a basis, is unreasonable. Refojo simply fails to address this requirement, and provides no desire for the user's vision to be completely unobstructed. Hence, the 35 U.S.C. §103 rejection of these claims is improper and should be withdrawn.

Conclusion

Applicants wish to expedite prosecution of this application. If the Examiner deems the application to not be in condition for allowance, the Examiner is invited and encouraged to telephone the undersigned to discuss making an Examiner's amendment to place the application in condition for allowance.

The Commissioner is hereby authorized to charge any deficiency or overpayment of any required fee for consideration of this response to Deposit Account No. 19-1345.

Respectfully submitted,

/Kurt F. James/

Kurt F. James, Reg. No. 33,716
SENNIGER POWERS LLP
100 North Broadway, 17th Floor
St. Louis, Missouri 63102
314/345-7000

KFJ/DXS/dss